

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved as amended June 16, 2017

Board/Committee:	<b>BOARD OF ETHICS</b>	Meeting Date	<b>May 19, 2017</b>
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 1:57 p.m.
Present	Chair Mary Tudela; Vice Chair Michael Curtis; Secretary Maureen Tabura. Members: Susan Burriss; Ryan de la Pena; Calvin Murashige; and Mia Shiraishi Staff: Mayor's Chief of Staff Paula Morikami; Deputy County Attorney Nicholas Courson; Commission Support Clerk Sandra Muragin		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>	<p><u>Chair Tudela</u>: I call this meeting to order at 1:00 p.m. Sandra, for the record can you please do the roll call.</p> <p><u>Commission Support Clerk Sandra Muragin</u>: Susan Burriss.</p> <p><u>Ms. Burriss</u>: Present.</p> <p><u>Ms. Muragin</u>: Michael Curtis.</p> <p><u>Mr. Curtis</u>: Here.</p> <p><u>Ms. Muragin</u>: Ryan de la Pena.</p> <p><u>Mr. de la Pena</u>: Here.</p> <p><u>Ms. Muragin</u>: Calvin Murashige.</p> <p><u>Mr. Murashige</u>: Here.</p> <p><u>Ms. Muragin</u>: Mia Shiraishi.</p>	Chair Tudela called the meeting to order at 1:00 p.m. with 7 members present.

SUBJECT	DISCUSSION	ACTION
	<p><u>Ms. Shiraishi</u>: Here.</p> <p><u>Ms. Muragin</u>: Maureen Tabura.</p> <p><u>Ms. Tabura</u>: Here.</p> <p><u>Ms. Muragin</u>: Mary Tudela.</p> <p><u>Chair Tudela</u>: Present.</p> <p><u>Ms. Muragin</u>: Chair, we have quorum.</p>	
<p><b>Approval of Minutes</b></p>	<p><u>Regular Open Session Minutes of March 17, 2017</u></p> <p><u>Chair Tudela</u>: Next item on the agenda is approval of minutes for Open Session April 21st.</p> <p><u>Ms. Tabura</u>: So moved.</p> <p><u>Ms. Tudela</u>: I have a motion from Ms. Tabura.</p> <p><u>Mr. de la Pena</u>: I second.</p> <p><u>Ms. Tudela</u>: Ms. Tabura motioned and Mr. de la Pena seconded.</p> <p><u>Ms. Burriss</u>: Will we have a discussion?</p> <p><u>Ms. Tudela</u>: Yes, we moved and seconded so now we go into discussion.</p> <p><u>Ms. Burriss</u>: It's very minor but I found find two areas on the minutes with my name Burriss spelled incorrectly. It's spelled with only one "s" and</p>	

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	<p>should have two.</p> <p><u>Ms. Tudela</u>: So we need a correction in the spelling of her name.</p> <p><u>Mr. Murashige</u>: Check your name plate.</p> <p><u>Ms. Burris</u>: No that has two, it's correct, the minutes do not spell my name correctly.</p> <p><u>Ms. Tudela</u>: The name plate is correct and minutes need to be corrected. Any other corrections or additions to the minutes? Hearing none, I would ask all those in favor? (Unanimous voice vote) Any opposed? (None)</p>	<p>Ms. Tabura motioned to approve the Open Session Minutes of March 17, 2017. Mr. de la Pena seconded the motion. Motion carried 7:0</p>
<p><b>Communication</b></p>	<p><u>BOE 2017-08 Copy of a memorandum dated April 25, 2017 from Mason K. Chock, Councilmember to Council Chair Mel Rapozo and Members of the Kaua'i County Council regarding a possible conflict of interest relating to Resolution No. 2017-33, Resolution authorizing the filing of the Kaua'i County 2017 Action Plan (Community Development Block Grant) with the Department of Housing and Urban Development, United States of America, for a grant under Title 1 of the Housing and Community Development Act of 1974 and 1987 (Public Laws 93-383 and 100-242), as amended.</u></p> <p><u>Chair Tudela</u>: Nick would you please read the first communication item.</p> <p>Deputy County Attorney Nicolas Courson read communication BOE 2017 - 08 into the record.</p> <p><u>Chair Tudela</u>: Is there a motion to receive?</p> <p><u>Mr. Murashige</u>: So moved.</p> <p><u>Ms. Tabura</u>: Second.</p>	

SUBJECT	DISCUSSION	ACTION
	<p><u>Chair Tudela:</u> Mr. Murashige moved and Ms. Tabura seconded. Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None)</p>	<p>Mr. Murashige moved to receive. Ms. Tabura seconded the motion. Motion carried 7:0</p>
<b>Communication</b>	<p><u>BOE 2017-09 Email follow-up from Chief of Police Darryl D. Perry and Deputy County Attorney Peter Morimoto requesting citation of the specific section and language in which the decision was based for RAO 17-006.</u></p> <p><u>Chair Tudela:</u> We are moving on to BOE 2017-09 which is an email in your packet. I would like to suggest that we defer this action until after we have the business discussion because they relate to each other. Is that okay with everyone? (Unanimous consent) Do we need a motion Nicholas?</p> <p><u>Mr. Courson:</u> No the Chair can usually take things in the order they see fit.</p> <p><u>Chair Tudela:</u> It will just be a little out of order.</p>	
<b>Business</b>	<p><u>BOE 2017-10 Commissions practice on Request for an Advisory Opinion decision citations discussion.</u></p> <p><u>Chair Tudela:</u> We are now on BOE 2017-10 which is what I asked to be placed on the agenda. I want to be clear that discussions with Council and myself happened before we received the email from Chief Perry. If you remember at the last meeting we had a conversation about annotations and referencing and here's where my training comes in, in terms of facilitating conversations. (Handouts were provided to the Board by Chair Tudela) I will explain the handouts and then we will have a dialogue. This is what I call a discussion reference tool. The question is whether or not the Board should cite a ruling. I've asked Nick to prepare a brief review of what the laws and statutes say about this question. We will then have a discussion and I hope this tool will get us through it as opposed to having a long drawn out dialogue because my intention is to have this be efficient. So the</p>	

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	<p>question we're going to answer is right there, the question for consideration. The rest of page 1 is simply reference stuff, it's where we find statutes and talk about this question or not talk about this question. The second page, page 2 of 2 is simply a page for you to take notes while we're talking and that's what the blank boxes are for. I want you to note your thinking because at the end, we're going to all have an opportunity to discuss this and give each other our opinion. It would be my hope that we come away with a consensus on how we'll practice in the future. We don't have to come to a conclusion or agreement and you'll see why in a minute. Does that make sense? It's now 1:07 p.m., let the record show that I turned the meeting over to our Counsel.</p> <p><u>Mr. Courson</u>: I should have probably asked for an Executive Session on this and since I didn't, on our agenda there's a notice of Executive Session if it's unanticipated. I would like to discuss this in Executive Session if that's okay. So I'll read out the notice and then ask for a vote. Pursuant to Hawaii Revised Statutes §92-7 (a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). The purpose of this executive session is to consult with the Board's attorney on liabilities. Paula Morikami is here because Jay Furfaro's former position is open. The Board can decide whether or not you want to invite Paula into Executive Session.</p> <p><u>Mr. Curtis</u>: I don't see why we need an Executive Session.</p> <p><u>Ms. Tudela</u>: Yes, thank you Michael. Help me. What is your compelling reason for going into Executive Session? I presume because you're going to give legal advice?</p>	

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	<p><u>Mr. Courson</u>: Yes, it would allow a franker discussion. It's up to you; the attorney/client privilege rests with the client. If you don't want it in Executive Session it's fine. If you waive the privilege it waives the privilege as to that subject pretty much forever. It's out of a surplus of caution that I would have it in Executive Session.</p> <p><u>Ms. Tudela</u>: Do I hear a motion?</p> <p><u>Mr. Murashige</u>: I motion to move into Executive Session.</p> <p><u>Ms. Burriss</u>: I second that.</p> <p><u>Ms. Tudela</u>: All those in favor? (Unanimous voice vote) Any opposed? (None) It's unanimous.</p>	<p>Mr. Murashige moved to go into Executive Session. Ms. Burriss seconded the motion. Motion carried 7:0</p>
<b>Return to Open Session</b>	<u>Ratify Board of Ethics actions taken in Executive Session</u>	No action was taken in Executive Session. The meeting resumed in Open Session at 1:15 p.m.
<b>Business (Continued)</b>	<p><u>BOE 2017-10 Commissions practice on Request for an Advisory Opinion decision citations discussion.</u></p> <p><u>Chair Tudela</u>: The wonderful thing about this exercise is it didn't take me very long, maybe about an hour of research. Now I'm much better informed on what we're supposed to do and not supposed to do based on all of the statutes. On Attachment A, HRS 92-9 Minutes, we are very aware of 1 and 2; "The members of the board recorded as either present or absent" and 3, "The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and" these are what we're supposed to keep in the minutes. Here's the interesting part, number 4; "Any other information that any member of the board requests be included or reflected in the minutes." What that means is anyone of us can ask that something be included in the minutes. Had I known that last month I would</p>	

SUBJECT	DISCUSSION	ACTION
	<p>have requested to add the rationale behind our decision to the minutes and that can be done at any time. The other thing I learned is anyone of us at any time can for the record submit a dissension. For example, let's say we've voted 5:2 and 1 of the 2 dissenters feels very strongly about something, he or she can for the record submit comments for the minutes. I wasn't aware of those governance kinds of things. Some of us have strong opinions and I just want us to have that conversation. The way I read all of this is we really should be adding a rationale to a decision and advisory opinion. We make a decision as a board, as a group, but this also gives us the right to add individual information. I would suggest that we go to the question which is on page 1 of 2 "Should the Board of Ethics practice be to include or not to include citations in our meeting minutes or particular code(s) to support decisions of conflict of interest on request for advisory opinions?" Is everyone with me, you all get why we're having a dialogue? Anybody want to start?</p> <p><u>Mr. Curtis</u>: I'd like to apply it specifically to this BOE 2017-09. I would move for the sake of discussion that we defer this question to the County Attorney's Office.</p> <p><u>Chair Tudela</u>: I just want to make sure that I heard what you said to make sure I give it the merit that it deserves; you want to limit the dialogue?</p> <p><u>Mr. Curtis</u>: No, I'm not limiting the dialogue.</p> <p><u>Chair Tudela</u>: Okay, that's why I want to make clear what you intended. Could you repeat it again?</p> <p><u>Mr. Curtis</u>: We're addressing BOE 2017-09, correct?</p> <p><u>Chair Tudela</u>: No. My dialogue, I have asked us...</p>	<p>Mr. Curtis motioned to defer this question to the County Attorney's Office.</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>Mr. Curtis:</u> That's why I raised the issue that brought it to the agenda...</p> <p><u>Chair Tudela:</u> No, that's not true.</p> <p><u>Mr. Curtis:</u> I just made the motion that we defer 2017-09 to the County Attorney for disposition.</p> <p><u>Chair Tudela:</u> I thought I was clear, but let me try this one more time. The question of whether or not we should cite code has been on our discussions over a number of months, this is not the first time it's come up.</p> <p><u>Mr. Curtis:</u> Correct.</p> <p><u>Chair Tudela:</u> Nick and I had a conversation before the last meeting where he wasn't present and the County attorneys asked us to include citations in our minutes. When I...</p> <p><u>Mr. Curtis:</u> The Appellant was...</p> <p><u>Chair Tudela:</u> Excuse me, Nicholas and I, separate from what came before us in the meeting last month, had a dialogue about whether the attorneys have asked us to include citations. This was separate from what happened in the last meeting so when it came up in that meeting that's the reason why Sinclair had the statutes ready to read. He read them to us and that's the reason why I moved that we include a rationale in the minutes because I had been given counsel from our attorneys to include those things. They're mutually exclusive, the overarching question is mutually exclusive and it absolutely applies to BOE 2017-09.</p> <p><u>Mr. Curtis:</u> So let's discuss it.</p>	



SUBJECT	DISCUSSION	ACTION
	<p><u>Chair Tudela</u>: You just moved and I want to make sure procedurally I didn't screw that up. You made a motion but there was not a second, I did not hear a second.</p> <p><u>Mr. de la Pena</u>: Please restate the motion.</p> <p><u>Mr. Curtis</u>: The motion was to defer this question to the County Attorney for disposition.</p> <p><u>Chair Tudela</u>: The reason I think we're a little bit confused is that we've deferred BOE 2017-09 until after we have the dialogue, the general overarching dialogue about whether or not we want to have a practice that's agreed to by everyone on whether or not we should cite code.</p> <p><u>Mr. Curtis</u>: This question raises that discussion.</p> <p><u>Chair Tudela</u>: My intention is to have a general discussion on how do we want our practice to be. We should understand what the articles, rules, and regulations suggest and then make a separate decision on BOE 2017-09 that may or may not support what we just discussed. That's the approach I want to take. I want to have an overarching conversation not specific to one case. What do we want our practice to be is the question and then we go and have the very first example of whether or not to do what we decide?</p> <p><u>Mr. Murashige</u>: Is it something on the agenda?</p> <p><u>Chair Tudela</u>: Is what something on the agenda?</p> <p><u>Mr. Murashige</u>: What you just raised.</p> <p><u>Chair Tudela</u>: I placed the discussion under the Business section of the</p>	<p>Mr. Curtis motioned to defer this question to the County Attorney for disposition.</p>

SUBJECT	DISCUSSION	ACTION
	<p>agenda before we received Chief's email.</p> <p><u>Mr. Courson</u>: The item Chair is referring to is agenda BOE 2017-10.</p> <p><u>Chair Tudela</u>: BOE 2017-10 was placed on the agenda and then late last week I was told we had an email from the Chief which I was unaware of. It's serendipitous to happen that it applied to each other. Does that make sense? I feel like I lost some of you.</p> <p><u>Mr. Curtis</u>: Either way, it dies for a lack of a second.</p> <p><u>Chair Tudela</u>: Your motion was to send it to the Attorney's and I was just saying that we can hear that again but right now we are over here because we deferred it until after we complete this.</p> <p><u>Mr. Curtis</u>: Right.</p> <p><u>Chair Tudela</u>: You may want to bring it up again in a few minutes when we get there because the dialogue might compel some people to change their opinion. I would like to take a moment and go to page 2 of 2 and have you think about the benefits to citing code. What are the disadvantages in your mind? This is your own personal thinking and I want us to talk a little bit about it. We have been asked by legal to include them and he just gave us the reasons on why we should include them. Last time we decided we were not going to do that and it had a consequence. I just want to make sure everyone has an opportunity to talk about the question. Mo do you have anything to say?</p> <p><u>Ms. Tabura</u>: It becomes situational to the issue presented before us, whether it helps to be specific and refer back to the statutes.</p>	

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	<p><u>Chair Tudela</u>: If I heard you right, there will be times when it's preferred to have a citation and times when we should withhold a citation.</p> <p><u>Ms. Tabura</u>: Possibly.</p> <p><u>Chair Tudela</u>: You're looking for the flexibility.</p> <p><u>Ms. Tabura</u>: As a non-legal opinion.</p> <p><u>Chair Tudela</u>: That's your opinion. Sue?</p> <p><u>Ms. Burriss</u>: My opinion is two-fold. From a legal stand point I think anything that lowers a risk for an appeal is a good thing so it's a good idea to attach our reason. The other is I think it's a courtesy to whoever has requested an opinion to give them our reasoning behind our rejection and to clear any conflict. Those two items for me compel attaching our reasoning to every decision.</p> <p><u>Chair Tudela</u>: To every decision?</p> <p><u>Ms. Burriss</u>: Unless it's just (inaudible)</p> <p><u>Chair Tudela</u>: Judge?</p> <p><u>Mr. Murashige</u>: I tend to lean more towards what Mo said, I think it's situational. I prefer we revisit BOE 2017-09 and come up with a base for the decision. Basically you're setting policies and if we start doing that does it mean we have to publish the policies? Because anyone that comes before us has to know the policies of what we follow. I think we should be more specific as to why we made the decision for this specific matter.</p>	

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	<p><u>Chair Tudela</u>: Okay, thank you. Mia?</p> <p><u>Ms. Shiraishi</u>: I tend to lean more in the same way as Maureen and Calvin in that attaching a reason gives it transparency. With Sue, I would want to know why the decision was rendered in a certain way however I am cautious about making it a general rule. I do think it's situational and also excuse my ignorance but has there been in the past a trend towards attaching a reasoning or not attaching a reasoning?</p> <p><u>Chair Tudela</u>: The way I would answer that question is I think it really depends on the Chair. My experience was early on we didn't so much and then what's his name?</p> <p><u>Mr. Murashige</u>: Warren.</p> <p><u>Chair Tudela</u>: When Warren Perry was Chair we tended to consistently cite the actual code. Now with me here, we are much more reticent to do it. From my perspective I really don't have a personal preference I just want us to be consistent. For me situational decision making is consistency. My definition is broad enough to be comfortable and I think that when we can we should give a reason. It was important for me to also point out the law about the minutes because anyone of us can say I would like the record to show, we have that ability. Ryan?</p> <p><u>Mr. de la Pena</u>: I agree with everyone. Just to be consistent we should cite a reason and stating a reason and citing a reference gives our decision a little more teeth and it's something dependable rather than an ambiguous answer of yes or no. Like what Susan said it gives the requestor a reason why we came to the decision.</p> <p><u>Ms. Tabura</u>: Can our answer be more general instead of citing a specific</p>	

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	<p>code?</p> <p><u>Chair Tudela</u>: Right. That's the way we used to do it. We would cite 20.02 e., as an example, and we wouldn't necessarily defend that in the minutes we would just say based on this we find a conflict and that's pretty much how our minutes read. Michael?</p> <p><u>Mr. Curtis</u>: I think we were clear on why we gave that opinion. I brought this today that supports my motion and it says, "Welcome to your crash course on legal participation as a new County Officer Boards and Commissions Orientation County Attorney March, 2016. Using official position to secure special benefits, privileges or exemptions...", these are prohibitions of ethics given to me when I became a member of this Ethics Commission. We stated that in the discussion when we rendered the opinion. The other point I wanted to make was we were asked for an advisory opinion. The Board rendered its opinion as follows, "pursuant to the request by any officer or employee or former employee or officer as to whether or not the facts or circumstances of a particular case violate or will violate standards of conduct prescribed by the code of ethics." In our discussion we did state it was using an official position to secure special benefits and privileges. As a realtor I'm sensitive to risk and when you state a specific code or paragraph it limits your argument in support of your decision and it limits the County Attorney's defense if our opinion is challenged. If the opinion is challenged and the code that we cited is erroneous we're limiting the County Attorney's argument in an appeal. These citations and opinions were included in the minutes, I said the police officer would receive something that is not available to the general public. The next question is whether the County Attorney was representing the private party that initiated the letter? That seemed like a benefit and we chose to cite it as an unethical behavior. That's where I am.</p>	

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	<p><u>Chair Tudela</u>: I agree with you on your last point. There was a lot of what you said so I just want to dialogue this thing out for clarity.</p> <p><u>Mr. Curtis</u>: Okay.</p> <p><u>Chair Tudela</u>: Your approach is we want to limit our risk, that's what I heard you say and you don't want to cite so the attorneys can have the flexibility of defending our decision.</p> <p><u>Mr. Curtis</u>: Yes.</p> <p><u>Chair Tudela</u>: My take on it is we want to share the rationale and if someone challenges our decision what's the worst that can happen? Nick let's just say that someone challenges our advisory opinion, what happens next?</p> <p><u>Mr. Courson</u>: Well the most likely thing to happen is it would go to Circuit Court and appeal it. The worst thing is you could all be sued, but that's unlikely and we'd defend you, it would just be a nuisance.</p> <p><u>Chair Tudela</u>: Our decision could be challenged and end up in court. From my prospective, to me ethics means above all do no harm and so we have done the best we can as a group to make a decision on a particular question that has been put before us. If it was flawed then we should be challenged, that's the way I look at it. I hear your rationale and my point is I have a different approach.</p> <p><u>Mr. Murashige</u>: What Mike said is that we have expressed our feelings about the request for advisory opinion and we have in essence taken a position. He is asking to now have our Attorney fit our decision within the confines of our code. Now I realize he was not here but that is what he's</p>	

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	<p>trying to say. This is how we feel, this is how we ruled, now...</p> <p><u>Chair Tudela</u>: So it's up to the Attorney to decide</p> <p><u>Mr. Murashige</u>: That's what I suspect.</p> <p><u>Chair Tudela</u>: I didn't hear that so I'm just asking the question for clarity. Is that your intentions when you asked the attorneys to decide?</p> <p><u>Mr. Curtis</u>: My argument again would be under what definition would using an official position to secure special benefits, privileges or exemptions be? That's what I stated and would ask the County Attorney to substantiate that.</p> <p><u>Chair Tudela</u>: What you just said Michael is we're going to make the decision and they're going to defend it.</p> <p><u>Mr. Curtis</u>: We've made the decision.</p> <p><u>Chair Tudela</u>: Yes, I agree with you I just want to make sure I'm hearing you clearly.</p> <p><u>Ms. Tabura</u>: As I read the minutes, I can see it's because we started the conversation before Calvin said it was a conflict and I seconded it. We didn't rationale and then we asked questions and then we stopped. We made our decision, we voted, and then we all concurred which didn't provide any direction. So you're saying you don't want us to give direction? You want us to turn it over to the County Attorney's Office?</p> <p><u>Mr. Curtis</u>: If you read the minutes...</p>	

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	<p><u>Ms. Tabura</u>: I did.</p> <p><u>Mr. Curtis</u>: It's an unofficial use of an official position to secure special benefits, privileges or exemptions and I specifically stated that option was not available to non-police officers. It should be in the minutes or on the tape. I did state it's a benefit that is not available to anybody else.</p> <p><u>Chair Tudela</u>: I think that was clear Michael, in fact we are using the other example because it's most relevant. In fact I believe there was an agreement on that particular question that you just stated. It's compelling to understand that the minutes, what is said in the minutes is also rationale for the decision. In this particular case should we cite the actual piece of legislation that we are defining it on?</p> <p><u>Mr. Curtis</u>: Does the policy request that it needs to be addressed case by case?</p> <p><u>Chair Tudela</u>: I agree it needs to be addressed case by case. I'm not looking to make policy changes; I'm looking to make our practice efficient and consistent. I don't want to make it bigger than it is but I did sense disagreements and misunderstanding. I clearly misunderstood the codes and when we had the question before us last month I thought it worthy to come back and spend 15-20 minutes to clarify this because I wanted to know how we should approach what is documented. This is compelling when we make a decision with a conflict. Anyone else want to say anything else before we move on.</p> <p><u>Mr. Courson</u>: I just wanted to address a couple of points. My colleague Peter Morimoto wasn't representing a private person. Chief who made the request to the Board of Ethics sent Peter on his behalf. He was not here on behalf of the Housing Agency.</p>	



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	<p><u>Mr. Curtis:</u> I would argue with that. The housing project benefitted and the police officer benefitted. The housing project is the private party who was the beneficiary to Peter's argument and the Chief's request.</p> <p><u>Mr. Courson:</u> There's an impossibility for Chief to determine without coming to you. You determine that. To say that he's damned just for asking the question, once you say that they'll abide but honestly they were surprised by your decision. The program is a nationwide program, and I'm not trying to defend that but they thought because it's so prevalent you wouldn't have a problem. As it turned out you thought it was a special benefit but coming over and asking on behalf of Chief doesn't mean he was trying to advance anything. It just means Chief was asking a question.</p> <p><u>Mr. Murashige:</u> I still stick to my original decision that it is a benefit, a special benefit.</p> <p><u>Mr. Courson:</u> I was just trying to just address Vice Chair Curtis.</p> <p><u>Mr. Curtis:</u> I was off the wall on that one.</p> <p><u>Chair Tudela:</u> I don't think you were so much off the wall Michael. There was some discussion and I did make a comment because the position of Peter was really between the third party and the employee. I think we asked the clarifying question as to why is the County Attorney changing a lease. There is an actual County employee involvement in editing a contract.</p> <p><u>Mr. Curtis:</u> A private contract.</p> <p><u>Chair Tudela:</u> Yes. That was the muddy waters we were in and there was some concern from that perspective as well.</p>	

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	<p><u>Mr. Courson</u>: That makes more sense to modify the contract because he was protecting the County's interest by making it clear the County is not a part of this. If he can't ask the question that's a catch 22. The least I can do is bring this up to my boss as a concern that the Board mentioned.</p> <p><u>Mr. Murashige</u>: I think it should also be mentioned that he makes reference to nationwide but it's just his opinion, we didn't have anything to compare it with. It could be apples and oranges we didn't know what their code of ethics is or if they have any.</p> <p><u>Chair Tudela</u>: For me the compelling question was Judge's question of did you come to us for the other two instances on the island for an opinion and the answer was they don't know.</p> <p><u>Ms. Tabura</u>: It was don't know.</p> <p><u>Chair Tudela</u>: Do you remember that Judge?</p> <p><u>Mr. Murashige</u>: The answer was I don't know.</p> <p><u>Mayor's Chief of Staff Paula Morikami</u>: Paula Morikami, temporary Office of Boards and Commissions. I'm covering for the Administrator at Boards and Commissions. I worked in the Boards and Commissions Office for 4-1/2 years and throughout the 4-1/2 years whenever there was an advisory opinion request this body always gave the section of the code of ethics where it applied. This board cited the section so that as Ms. Shiraishi said the person who's asking is really asking because they don't know. It's not like they think they're right, they have their own opinion but just to clarify for them it's easier for them to know exactly which code is the reason for you voting that way. In Mr. Curtis's comments I was here at the last</p>	

SUBJECT	DISCUSSION	ACTION
	<p>meeting and your comments in my opinion, in my personal opinion were yes using official capacity. But the Board did not vote on that so all of you could have had different code of ethics sections that you thought it applied to. Unless the board uniformly votes on a particular citation they might have other sections of the code that applied. When a decision is rendered it doesn't have to be unanimous. I think a vote should be taken on the particular code and section because there's a bunch of sections. Regarding the issue of Pa'anau Village and Kalepa Village, the two sites that used to do this before, I went back from day one of Board of Ethics to now and apparently they never came before the Board to ask for an opinion. There were no records regarding those two. Thank you.</p> <p><u>Chair Tudela</u>: Thank you</p> <p><u>Ms. Tabura</u>: I honestly in my nativity thought that Chief was coming here with this housing program knowing it was going to be an ethical problem. Finding out that they already had been doing it was quite concerning to me so I thought he was seeking our guidance on should they and could they move forward on this or not.</p> <p><u>Mr. Courson</u>: I think this was before Chief Perry's time those other two, he may not have known.</p> <p><u>Ms. Morikami</u>: In both cases, they don't do it any more, they have expired.</p> <p><u>Mr. Courson</u>: Echoing what Ms. Morikami said it would make writing the opinion easier if it is in the motion. The best I can say now is that it was discussed. If that's how you feel that it's a special benefit and a few people mentioned it then I personally don't see any harm in just saying so. The last point that Vice Chair Curtis made on attempting to give the County Attorney's more options in an appeal, I honestly think we'd have less. If</p>	

SUBJECT	DISCUSSION	ACTION
	<p>you want to give us more options it would be better to say this is a special benefit and it also is a gift, then you have more options. The less discussed the less we have options and the more we are going to face an argument from the appellant that this body's discussion was arbitrary and capricious. That is the main threat to us on an appeal because you have a wide discretion to make your decision, but you do need to supply a reason, is my reading of the law.</p> <p><u>Chair Tudela</u>: I'm going to try and summarize this. I don't personally feel that we should make a motion and I don't think we need to. Essentially this dialogue was very helpful to me so thank you all for participating. What I'm hearing the will of the group is that we make our practice situational and that we decide on a case by case basis on whether or not we are going to refer citations. Is that what everyone heard? Is that fair? No one objects to that? (None) I would then conclude the discussion in the business portion and take us back to the agenda item, the question for Chief of Police Perry.</p> <p><u>Ms. Burriss</u>: I'm troubled about one item. The one that we were advised by Counsel at the last meeting to opine a reason to our decision and I wonder to what extent this body took into consideration the advice from Counsel. We have him here we should use him. He's done his research and to ignore him might be our peril too and this hasn't come up in this discussion.</p> <p><u>Chair Tudela</u>: I think that was going to come up with the next agenda item because we're going to go back to the actual consequences of the fact that we did not opine and the citation had a consequence, Chief of Police Perry came back for clarification.</p> <p><u>Ms. Burriss</u>: Mr. Courson told us it's a good idea to put it in there regardless of whether it's the right one or the wrong one it's still okay.</p>	
<b>Communication</b>	<u>BOE 2017-09 Email follow-up from Chief of Police Darryl D. Perry and</u>	

SUBJECT	DISCUSSION	ACTION
(Continued)	<p><u>Deputy County Attorney Peter Morimoto requesting citation of the specific section and language in which the decision was based for RAO 17-006.</u></p> <p><u>Chair Tudela:</u> Unless there's an objection I would like us to refer to agenda item BOE 2017-09 and conclude the business section. Sandra we're completing that business dialogue which is what it's supposed to be and bottom line we came away with the discussion of a situational on a case by case basis. Is that fair? Let's go back to the agenda item I deferred, BOE 2017-09, an email from Chief of Police Darryl D. Perry. His question as I read it "Could someone please cite the specific section and language in which the decision was based because there are similar programs nationwide that showed no conflicts. Perhaps the Ethics Commission can do further research in that regard." We get to decide if we are going to answer Chief of Police Perry's email and it would be a courteous thing to give him a reply. We need to respond to his question which doesn't necessarily mean we agree with this question. I now open the floor for dialogue on this particular item.</p> <p><u>Mr. Murashige:</u> Dialogue or a motion.</p> <p><u>Chair Tudela:</u> Thank you Judge, I prefer a motion because it makes sense. That's my personal preference.</p> <p><u>Mr. Murashige:</u> I move that in the advisory opinion it includes reference section 20.01 and 20.02 sub section E as a basis for our decision.</p> <p><u>Mr. de la Pena:</u> I second that.</p> <p><u>Chair Tudela:</u> Mr. Murashge moved and Mr. de la Pena seconded. Mr. Murashige can you tell me what sub section E is.</p> <p><u>Mr. Muragshige:</u> Use the officer(s) official position to secure special</p>	

SUBJECT	DISCUSSION	ACTION
	<p>benefit, privilege or exemption.</p> <p><u>Chair Tudela</u>: Is there any discussion? It has been moved and seconded. Any discussion? (None) All those in favor? (Unanimous voice vote)</p> <p><u>Chair Tudela</u>: I just want a point of clarification please, does this mean we're editing what we decided last meeting?</p> <p><u>Chair Tudela</u>: That would be a letter from me and I will take care of that. I trust you all don't want to work on the letter because it's going to be simple, less is more.</p>	<p>Mr. Murashige moved that the advisory opinion it include reference sections 20.01 and 20.01 sub section E as a basis for the decision. Mr. de la Pena seconded the motion.</p> <p>Motion carried 7:0</p>
<b>Disclosures</b>	<ol style="list-style-type: none"> <li>1. <u>Wade Larry Lord (Planning Commission)</u></li> <li>2. <u>Linda Kaauwai-Iwamoto (Fire Commission)</u></li> <li>3. <u>Henry Ramsey Ross (Deputy Prosecuting Attorney)</u></li> <li>4. <u>Nicholas Courson (Deputy County Attorney)</u></li> </ol> <p><u>Chair Tudela</u>: Next on the agenda are disclosures.</p> <p><u>Ms. Tabura</u>: I'd like to make a motion to accept disclosures 1-4 as complete.</p> <p><u>Mr. Murashige</u>: Second.</p> <p><u>Chair Tudela</u>: Mr. Murashige seconded and Ms. Tabura motioned. Any discussion? (None) All those in favor? (Unanimous voice vote) Opposed? (None) That's unanimous.</p>	<p>Ms. Tabura motioned to accept Disclosures 1-4 and deem them complete. Mr. Murashige seconded the motion. Motion carried 7:0</p>
<b>Announcements</b>	Next Meeting: Friday, June 16, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room	
<b>Adjournment</b>	<u>Chair Tudela</u> : I would like to entertain a motion to adjourn.	

SUBJECT	DISCUSSION	ACTION
	<p><u>Mr. de la Pena</u>: So moved</p> <p><u>Ms. Tabura</u>: Second.</p> <p><u>Chair Tudela</u>: Mr. de la Pena seconded and Ms. Tabura motioned. All those in favor? (Unanimous voice vote)</p>	<p>Mr. de la Pena moved to adjourn the meeting at 1:57 p.m. Ms. Tabura seconded the motion. Motion carried 7:0.</p>

Submitted by: \_\_\_\_\_  
Sandra M. Muragin, Commission Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Mary Tudela, Chair

( ) Approved as circulated.

( x ) Approved with amendments. See minutes of June 16, 2017 meeting.